
CANADA / JUDGMENT

R. v. Par

2009 BCSC 1590

COURT

Supreme Court of British Columbia

DECIDED

20 November 2009

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2009 BCSC 1590 R. v. Par

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Par,

2009 BCSC 1590

Date: 20091120

Docket: 70186

Registry: Kelowna

Regina

v.

Ondrej Par

Corrected Judgment: The text of the judgment was corrected on page 2, at para. 1, on November 23, 2009

Before: The Honourable Mr. Justice Rogers

On appeal from: Provincial Court of British Columbia, June 17, 2009,

(Regina v. Par, unreported, Penticton Docket No. AH40971237)

Reasons for Judgment

Counsel for the Crown:

D.M. Ruse

Appearing on his own behalf:

O. Par

Place and Date of Trial/Hearing:

Kelowna, B.C.

November 16, 2009

Place and Date of Judgment:

Kelowna, B.C.

November 20, 2009

Introduction

- [1] Mr. Par appeals his conviction of excessive speeding. He maintains that the learned Judicial Justice of the Peace who tried the case failed to properly appreciate the evidence at trial and that his conviction cannot be supported on the evidence.

Evidence at Trial

- [2] The trial took place before Judicial Justice of the Peace Burgess on June 17, 2009. Mr. Par represented himself. He pled not guilty to the charge of operating a motor vehicle at a speed in excess of 40 kph over the posted speed limit. There was only one witness: Cst. Houben.
- [3] Cst. Houben testified that on May 30, 2008, he was operating a marked police vehicle near Princeton, B.C. He testified that before he set out on his patrol that day, he had calibrated the radar equipment in his car against his car's speedometer. He did that by operating the radar while he drove along the road. The radar measured the speed at which his vehicle passed stationary objects. The officer testified that the radar and the speedometer gave readings within 2 kph of each other.
- [4] Cst. Houben testified that he was on patrol when he observed two motorcycles leaving a filling station on the highway on the east side of Princeton. He followed the motorcycles. Mr. Par was operating the lead bike, while a person named Mr. McLaughlin was driving the following bike. Cst. Houben followed the motorcycles at a distance of 150 meters or so.
- [5] The motorcycles led Cst. Houben out of Princeton. At a point on the highway about 2.5 to 3 kilometers past the filling station, the motorbikes entered a piece of highway adjacent to a golf course. At that point, the highway's speed limit is signed at 90 kph. Cst. Houben measured the motorcycles' speed twice along that piece of roadway. The first measurement was of 115 kph and the second was of 120 kph.
- [6] At a point about seven kilometers beyond Princeton, the officer testified that the motorcycles entered a stretch of highway where the posted speed limit was 100 kph. He said that he observed the lead motorcycle catch up to and overtake two vehicles that were going in the same direction. He said that he saw the second motorcycle wait for oncoming traffic to clear, and then the second bike overtook the cars ahead as well. The officer followed.

- [7] Cst. Houben testified that he pulled up behind the motorcycles after they finished overtaking the cars and after they had gone through a set of curves on the highway. The officer testified that he held his position behind the motorbikes after catching them up, and observed that as he paced the motorbikes his car was going 154 to 156 kph. He then accelerated and pulled up beside the cyclists and instructed them to pull off the road. They did, and the officer cited Mr. Par for exceeding the posted speed limit by more than 40 kph.
- [8] Mr. Par cross-examined Cst. Houben. He put several propositions to the officer. He suggested to Cst. Houben that the straight stretch of road on which the passing maneuver took place was two kilometers long rather than the 475 to 550 meters that the officer estimated. Mr. Par suggested to Cst. Houben that the officer was more than the approximately 150 meters he had estimated he was behind the cyclists when they began their overtaking maneuver. He suggested that he had slowed as he came up behind the traffic that he subsequently overtook, as opposed to simply pulling out to pass as the officer said he did. Cst. Houben did not agree with any of these suggestions.
- [9] Mr. Par did not testify himself. He did not offer any other evidence in his defence.

Trial Judgment

- [10] In his reasons for judgment, the learned Judicial Justice of the Peace summarized the evidence at trial. He noted the various propositions that Mr. Par had put to Cst. Houben in cross-examination.
- [11] The learned Judicial Justice of the Peace concluded that the officer's evidence satisfied him beyond a reasonable doubt that Mr. Par had committed the offence with which he had been charged. The learned trial judge entered a conviction on the charge and imposed a fine.

Standard of Appellate Review

- [12] The right to appeal from a summary conviction matter is governed by Part XXVII of the Criminal Code, R.S.C. 1985, c. C-46. Section 822(1) of the Criminal Code provides that, in a summary conviction appeal pursuant to s. 813, ss. 683 to 689 relating to appeals of indictable offences, except s-s. 683(3) and s-s. 686(5), apply. Subsection 686(1) states:

686(1) On the hearing of an appeal against conviction... the court of appeal

- (a) may allow the appeal where it is of the opinion that
 - (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
 - (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or,
 - (iii) on any ground there was a miscarriage of justice;

- [13] The function of the summary conviction judge is to determine whether the trial judge could reasonably have reached the conclusion that the appellant was guilty beyond a reasonable doubt: *R. v. W.(R.)*, [1992] 2 S.C.R. 122; *R. v. Grosse* (1996), 29 O.R. (3d) 785 (Ont.C.A.). An appeal judge must consider the evidence at trial and must, to a limited extent, examine and weigh it. That exercise has a limited purpose though, and that is to assess whether the evidence is reasonably capable of supporting the trial judge's conclusions. If it is, the appeal court is not entitled to substitute its own view of the evidence for that of the trial judge: *R. v. Burns*, [1994] 1 S.C.R. 656.
- [14] In *R. v. Yebes*, [1987] 2 S.C.R. 168, the Supreme Court of Canada laid down the test for whether a verdict at trial was unreasonable. The court said:
- [25] ...The court must determine on the whole of the evidence whether the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered.
- [15] When it comes to reviewing the trial court's assessment of credibility, an appellant court must give due deference to the trial judge. See, for example *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, where Iacobucci and Major JJ. said at ¶22 and ¶24:

...trial courts are in an advantageous position when it comes to assessing and weighing vast quantities of evidence. In making a factual inference, the trial judge must sift through the relevant facts, decide on their weight, and draw a factual conclusion. Thus, where evidence exists which supports this conclusion, interference with this conclusion entails interference with the weight assigned by the trial judge to the pieces of evidence.

...although the same high standard of deference applies to the entire range of factual determinations made by the trial judge, where a factual finding is grounded in an assessment of credibility of a witness, the overwhelming advantage of the trial judge in this area must be acknowledged...

Issues on Appeal

- [16] Mr. Par based his appeal on the proposition that Cst. Houben's testimony was unreliable and could not underwrite the learned Judicial Justice of the Peace's conclusions.
- [17] More specifically, Mr. Par asserts that because Cst. Houben admitted that 156 kph was close to his police car's top speed, and because Cst. Houben admitted that the two motorcycles were, for a period of time, well ahead of his car, then Cst. Houben could never have caught up to the two bikes if they were also going 156 kph.
- [18] Mr. Par also complains that the learned Judicial Justice of the Peace failed to consider the points he made in his cross-examination of Cst. Houben.

Discussion

- [19] There are two fatal flaws in Mr. Par's submissions. The first is that nowhere did Cst. Houben assert that Mr. Par's motorcycle maintained a steady speed of 154 to 156 kph from the time that Mr. Par finished his passing maneuver to when Cst. Houben pulled him over. The fact that Cst. Houben managed to catch up to Mr. Par's motorcycle does suggest that for a while after passing the other traffic, Mr. Par's motorcycle was going less than 154 to 156 kph. However, that supposition does not stand in the way of the proposition that for about half a kilometer of travel after Cst. Houben managed to catch up to the bikes Mr. Par was in fact going as fast as Cst. Houben said he was.
- [20] The second fatal flaw in Mr. Par's argument is that the learned Judicial Justice of the Peace did refer to the cross-examination. He made those references at paragraphs 10, 11 and 14 of the judgment. It cannot be said that the learned Judicial Justice of the Peace failed to consider the effect of Mr. Par's cross-examination.
- [21] That cross-examination was not particularly effective in any event. Its frailty was accentuated by the fact that there was no evidence at trial which actually contradicted the officer's testimony. In the result, the only actual evidence before the learned Judicial Justice of the Peace was the officer's testimony. That evidence was not internally inconsistent. Neither was it incredible in the sense of being so at odds with commonly accepted principles as to be incapable of belief. In my view, the officer's evidence was easily sufficient to support the Judicial Justice of the Peace's conclusion that Mr. Par was guilty of excessive speeding. Mr. Par has not, therefore, shown that the Judicial Justice of the Peace erred or that his decision should be reversed.

Conclusion

- [22] The appeal must be dismissed.

"P.J. Rogers, J."

The Honourable Mr. Justice Rogers

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